

# **EXHIBIT K**

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Gross v. GFI Group

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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BENJAMIN GROSS, Individually and on  
Behalf of All Others Similarly Situated,  
Plaintiffs,

v.

GFI GROUP, INC., COLIN HEFFRON,  
and MICHAEL GOOCH,  
Defendants.

Case No.: 1:14-CV-09438-WHP  
-----

VIDEO DEPOSITION OF  
William Purcell  
September 25, 2017  
New York, New York  
Lead: John Lynch, Esquire  
Firm: Wachtell Lipton Rosen & Katz

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1 price, and I think through the efforts of the  
2 special committee and what have you, they got  
3 him up to 165, plus the assumption of the  
4 RSUs, but I think at one point it was at 145  
5 and even a little bit lower at one point. So  
6 they did get him up from what he wanted to do  
7 initially.

8 Q. And the "they" there is the special  
9 committee, right?

10 A. Yes.

11 Q. And so if you testified early that  
12 Mr. Gooch paid the absolute minimum for the  
13 IDB that he could pay, that's not correct,  
14 right?

15 MR. ZWICK: Objection.

16 A. I did not say that.

17 MR. ZWICK: Let me just get my  
18 objections in.

19 THE WITNESS: I'm sorry.

20 MR. ZWICK: Go ahead.

21 A. I did not say that. I said based  
22 on the evidence, his intent was to always be  
23 able to pay as little as possible, and he got  
24 negotiated up somewhat. But his intent was  
25 to always pay -- to own the IDB for as least

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1 money as possible.

2 BY MR. LYNCH:

3 Q. He was a buyer, right?

4 A. Yes.

5 Q. And that was obvious from the face  
6 of the press release that he was a buyer of  
7 the brokerage business, right?

8 MR. ZWICK: Objection.

9 A. That's correct, from the press  
10 release, yes.

11 BY MR. LYNCH:

12 Q. And as a matter of pure economics,  
13 it's perfectly obvious that a buyer would  
14 prefer to pay as little as possible for  
15 assets that he was to acquire, correct?

16 A. It's correct with an expanded  
17 answer.

18 Q. Sure. What's your expanded answer?

19 A. Given the press release and the  
20 fact that a special committee was there and a  
21 special committee unanimously approved it,  
22 any reasonable investor would assume that a  
23 normal process had gone on with a special  
24 committee because there were many special  
25 committees, and that process is reasonably

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1 well known. The role of the special  
2 committee is to try and create, in effect, an  
3 arm's length transaction of all the parties  
4 to get the highest price possible for the  
5 shareholders of the company. And the press  
6 release didn't say the special committee  
7 had -- or even the fairness opinion of  
8 Greenhill was subject to certain limitations,  
9 which were evident when the proxy came out,  
10 that all the things the special committees  
11 considered and the interference with Gooch  
12 and the special committee and the fact that  
13 Gooch said he wouldn't sell to anybody else,  
14 none of that was disclosed in the press  
15 release. It wasn't even disclosed in the  
16 press release that there were certain  
17 limitations on the fairness opinion or the  
18 work of the special committee. So a  
19 reasonable investor would have no reason to  
20 believe, other than the fact that a normal  
21 special committee process had gone forward  
22 and that everybody was satisfied that -- for  
23 instance, there was no fairness opinion on  
24 the IDB, even though CME had asked for one  
25 late in the process. But most reasonable

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1 investors would assume a complete process had  
2 been done and there was no interference or  
3 limitations on the work of the special  
4 committee.

5 **Q. You referred a few times there to a**  
6 **normal special committee process. What's a**  
7 **normal special committee process, for you?**

8 A. A normal special committee process  
9 is, as I said before, to create an arm's  
10 length type of transaction, which means there  
11 will be no conflicts. And even if the  
12 management wants to buy the company, the  
13 special committee has done everything  
14 possible to make sure that that price is as  
15 high as possible, including talking to other  
16 people and trying to set up a competitive  
17 situation to make sure that the price is as  
18 high as they can possibly get it.

19 **Q. Is it your view that under**  
20 **generally accepted investment banking**  
21 **methodologies in an M&A selling process that**  
22 **there needs to be a market check?**

23 A. Again, it was one of the comments  
24 that Mr. Fisher made. On rare occasions,  
25 sometimes there are situations -- and an

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1     when the company -- when management says that  
2     they may want to buy the company, but it can  
3     go either way. You know, it depends when  
4     that special committee is formed.

5           **Q.     I will just ask the question again.**  
6     **Have you ever done any empirical analysis or**  
7     **seen any empirical analysis that measures how**  
8     **frequently pre-signing market checks are**  
9     **conducted in special committee M&A selling**  
10    **processes as opposed to pursuing a single**  
11    **bidder strategy?**

12           A.     I haven't seen such a setting.

13           **Q.     Well, one of the ways that a**  
14    **special committee can protect shareholders is**  
15    **to negotiate a deal with a single bidder and**  
16    **execute a merger agreement that contains a**  
17    **fiduciary out provision, right?**

18           A.     Yes.

19                   MR. ZWICK: Objection.

20                   THE WITNESS: I'm sorry.

21           A.     I mean, generally speaking, you  
22    know, it's rare to see no fiduciary out in an  
23    agreement.

24           BY MR. LYNCH:

25           **Q.     But that's one of the ways that a**

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1     **special committee can protect shareholders,**  
2     **right?**

3           A.     Well, yes. But before they do  
4     that, they feel comfortable that they have  
5     done everything possible to get the highest  
6     price possible, and they have a fiduciary out  
7     in case somebody comes along. I think there  
8     have been plenty of studies done that  
9     indicate that as a percent of total deals,  
10    the number of deals that come in on a basis  
11    of a fiduciary out is a rather small  
12    percentage. I don't know whether it's 15  
13    percent, what have you. I can't remember.  
14    But it's -- once they have done their job,  
15    it's more common that no competing deal comes  
16    in than it is that a competing deal does come  
17    in.

18           Q.     Have you ever seen any empirical  
19    analysis or research or conducted any  
20    analysis yourself that persuades you or  
21    convinces you that conducting a pre-signing  
22    market check leads to superior pricing on  
23    sell-side assignments than following a  
24    strategy of negotiating with a single bidder  
25    and including a fiduciary out?



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1 BY MR. LYNCH:

2 Q. And that's the sentence that you  
3 are opining is misleading, correct?

4 A. Correct.

5 Q. And just for the record, it reads,  
6 "Optimizing GFI's value for stockholders has  
7 been a goal of management since becoming a  
8 public company in 2005, and this transaction  
9 represents a singular and unique opportunity  
10 to return value."

11 Have I read that right?

12 A. Yes.

13 Q. Okay. The sentence before that,  
14 the first sentence that's attributed to  
15 Mr. Gooch, reads, "We are very pleased to  
16 announce this transaction with CME Group and  
17 the substantial premium and liquidity it  
18 delivers to our stockholders."

19 Do you see that?

20 A. Yes.

21 Q. Do you believe that's false?

22 A. No.

23 Q. No reason to believe that's false,  
24 correct?

25 A. No. It was, quote, a substantial

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1 premium, about 46 percent, and CME was a very  
2 liquid stock.

3 Q. More liquid than the GFI Group  
4 stock, right?

5 A. Yes.

6 Q. So a stock deal with the CME Group,  
7 if it closed, would have delivered liquidity  
8 to GFI shareholders, right?

9 A. Yes.

10 Q. As well as a substantial premium,  
11 right?

12 A. Yes.

13 Q. The third sentence of the comment  
14 reads, "I am very proud of what our Trayport  
15 and Fenics teams have achieved since becoming  
16 a part of GFI."

17 Do you see that?

18 A. Yes.

19 Q. And those are the -- Trayport and  
20 Fenics are the two software businesses that  
21 were being sold to CME in a two-step  
22 transaction, right?

23 A. Yes.

24 Q. The sale of those businesses to CME  
25 Group in exchange for CME stock was a way of

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1 reasonable statement.

2 Q. Okay. The fourth sentence of the  
3 comment that's attributed to Mr. Gooch reads,  
4 "We are excited that these businesses will  
5 become part of a dynamic and highly regarded  
6 company where their immediate strategic value  
7 can be further realized within CME."

8 Do you see that?

9 A. Yes.

10 Q. That's a true statement, right?

11 A. I mean, it's a reasonable  
12 statement. I assume that's what he believed.  
13 And there is no reason to believe that would  
14 not be correct.

15 Q. Okay. And the two businesses that  
16 are referred to there are Trayport and  
17 Fenics, right?

18 A. Yes.

19 Q. And the CME Group, that's the  
20 business that owns the Chicago Mercantile  
21 Exchange, right?

22 A. Yes. That's what CME stands for,  
23 so, yes.

24 Q. And that's a highly regarded  
25 company, right?

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1 A. It is.

2 Q. **And it's a dynamic company, right?**

3 MR. ZWICK: Objection.

4 A. I mean, that's a point of view. I  
5 mean, it's an aggressive company. It's done  
6 very well. So I have no problem with the  
7 word "dynamic."

8 BY MR. LYNCH:

9 Q. **If you go back to the first page of**  
10 **the press release, the very first bullet**  
11 **underneath the headline reads, "CME Group to**  
12 **acquire Trayport and Fenics from GFI Group,"**  
13 **right?**

14 A. Well, it just ended with a period  
15 there. It didn't say --

16 Q. **"For media release" -- there's a**  
17 **headline --**

18 A. Oh, I'm sorry. I thought you meant  
19 the first bullet under that.

20 Q. **I see what you mean.**

21 A. Okay. Yes.

22 Q. **There is a set of three bullets**  
23 **towards the top of the page.**

24 A. Right. Okay.

25 Q. **The first bullet reads, "CME Group**

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1 A. Yes.

2 Q. Okay. We are still on the first  
3 paragraph of the text of the press release,  
4 right?

5 A. Right. The second bullet, though.

6 Q. The second bullet of the first  
7 paragraph.

8 A. Right.

9 Q. And it was clear from the text that  
10 we have just read that Mr. Gooch and  
11 Mr. Heffron had an interest in the  
12 transaction, right?

13 A. Correct.

14 Q. It was clear from that text that  
15 Mr. Gooch and Mr. Heffron stood on both sides  
16 of the transaction, right?

17 A. Correct.

18 Q. Both as sellers of their GFI stock  
19 and buyers of the IDB business, right?

20 A. Yes. And that's why there was a  
21 special committee, which was also mentioned  
22 in the press release.

23 Q. Right. And so it was clear also  
24 that the special committee -- from the  
25 involvement -- clear to investors, anyway,

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1 from the involvement of the special committee  
2 that there was some attempt to address the  
3 fact that there were directors on both sides  
4 of the transaction, right?

5 A. Yes.

6 Q. And that would be clear to GFI  
7 stockholders in reading the press release,  
8 right?

9 A. Yes, because the special committee  
10 was mentioned.

11 Q. You have had experience in the  
12 drafting of press releases that announce  
13 merger agreements, right?

14 A. Yes. I mean, I have read them.  
15 Usually the investment banker does not get  
16 involved in the actual language.

17 Q. Have you ever been involved in the  
18 drafting of a press release?

19 A. Other than reviewing it, no.  
20 Because most people have, as in this case,  
21 their public relations department or whatever  
22 you want to call them that work on press  
23 releases.

24 Q. But bankers do review them?

25 A. If they are mentioned and they are

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1 process to maximize or optimize the value  
2 being obtained for the IDB. In fact, it was  
3 just the opposite.

4 **Q. Do you believe the special**  
5 **committee in the CME deal or in the process**  
6 **leading up to the CME deal did the best they**  
7 **could to achieve value for GFI shareholders**  
8 **under the circumstances that they confronted?**

9 A. I believe so and that's so stated  
10 in the proxy and so stated in the Greenhill  
11 fairness opinion. Given both the assumptions  
12 and limitations that were before them in  
13 terms of limiting the number of strategic  
14 alternatives that they could pursue, they  
15 believe they had basically done the best they  
16 could do given Gooch's position and  
17 interference.

18 **Q. And you agree with that, right?**

19 A. I didn't see anything that would be  
20 negative reflecting on either Greenhill or  
21 the special committee. They did the best  
22 they could under the circumstances it  
23 appeared.

24 **Q. Throughout -- we have done a little**  
25 **bit of talking about the word "optimizing" in**

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1           A.       The book that lists synonyms -- I'm  
2       not sure -- I will take your word for it.

3           **Q.       Forget about Thesaurus' for the**  
4       **moment. You said you looked at dictionaries**  
5       **too, right?**

6           A.       Yes.

7           **Q.       What dictionaries did you look at?**

8           A.       I have Websters and Colliers. I  
9       don't have more than two dictionaries. Most  
10      people don't.

11          **Q.       I may have asked you this earlier,**  
12      **but we were talking a little bit about the**  
13      **possibility that M&A transactions, once they**  
14      **are announced, can get topped.**

15                   Do you remember that testimony?

16          A.       Yes.

17          **Q.       And you agreed that it's always**  
18      **possible that an announced merger transaction**  
19      **might be topped by an alternative bidder.**

20                   Do you remember that?

21          A.       Yes.

22          **Q.       Reasonable investors understand**  
23      **that, right?**

24          A.       That that could happen, yes. In  
25      this case, I don't think they thought that



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1 would happen, as I say, because of the  
2 special committee and their control  
3 shareholder, and there wouldn't be any  
4 conflicts in his strong statement in the  
5 press release. I believe most reasonable  
6 investors did not think that.

7 As I said, the stock pattern all  
8 the way up to September 8th indicated that.  
9 Very little change in any single day.

10 **Q. Back to the "optimize" and**  
11 **"maximize" and your consultation of books**  
12 **that told you that they were synonyms. What**  
13 **books were those?**

14 A. Oh, my goodness, I couldn't  
15 remember. You say they call it -- it's a  
16 book of synonyms and antonyms. I don't know  
17 if it was called a Thesaurus or not on the  
18 cover page.

19 **Q. You mentioned the Tropicana**  
20 **transaction that you were involved in this**  
21 **morning?**

22 A. Yes. As an example.

23 **Q. What transaction is that?**

24 A. The sale of Tropicana to Coca-Cola.

25 **Q. What year did that take place?**

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1           A.       Oh, my goodness. It was a number  
2       of years ago, but I am using it just as an  
3       example. It's not a recent transaction.

4           **Q.       What was your role in that**  
5       **transaction?**

6           A.       Dillon, Read, we were representing  
7       Tropicana.

8           **Q.       What was your role?**

9           A.       I was one of the investment bankers  
10       giving advice to Tropicana in dealing with  
11       Coca-Cola.

12          **Q.       Were you on the deal team?**

13          A.       Yes.

14          **Q.       And you don't recall the year you**  
15       **said, right?**

16          A.       I just don't.

17          **Q.       Let's take a look at what's been**  
18       **marked as Exhibit 194, which is a Bloomberg**  
19       **transcript of a Q2 2014 earnings call dated**  
20       **August 1, 2014.**

21                **Do you have that in front of you?**

22          A.       I do.

23          **Q.       You have seen this before, right?**

24          A.       I have not seen this before, but I  
25       have heard -- I read it being referred to in

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1 terms of -- I think it was in one of the  
2 expert reports of Mr. Hefron saying in this  
3 earnings call, proxy will be coming out and  
4 read it, et cetera, for important  
5 information.

6 Q. I missed that. You said -- thank  
7 you.

8 You didn't consider this transcript  
9 in the formation of your opinions at all,  
10 correct?

11 A. I did not read the -- I did not  
12 receive nor did I read the actual earnings  
13 call other than what I had read about it  
14 elsewhere.

15 Q. Okay. Thank you.

16 Based on your experience, you are  
17 aware -- and this is dated August 1, 2014,  
18 right?

19 Do you see that?

20 A. I don't see the date actually.

21 Q. But you will accept that?

22 A. Yes.

23 Q. It's at the very top. I don't want  
24 to belabor it.

25 A. I do see it now.

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1           A.       I mean, I know he is a defendant.  
2       The main issues here, from my perspective,  
3       Mr. Gooch has been the main person involved,  
4       at least in everything I have read.

5           **Q.       Mr. Hefron doesn't refer back to**  
6       **the statement that you have opined is**  
7       **misleading here in the earnings call, does**  
8       **he?**

9           A.       He does not.

10          **Q.       And in your experience, these**  
11       **earnings calls are followed closely by**  
12       **sophisticated investors, right?**

13          A.       Institutional investors generally  
14       and analysts. I am not sure how many retail  
15       investors are on there, but they are  
16       generally followed.

17          **Q.       Would you agree, based on your**  
18       **experience, that the market price of a stock**  
19       **is generally driven by the views of**  
20       **institutional investors and research**  
21       **analysts?**

22                   MR. ZWICK: Objection.

23          A.       I would say generally, yes.

24       BY MR. LYNCH:

25          **Q.       And research analysts and**

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1     **institutional investors closely follow**  
2     **earnings calls, right?**

3             A.     They do.

4             Q.     I think you testified earlier you  
5     **have worked on proxy statements?**

6             A.     I'm sorry? Proxy statements.

7             Q.     You have worked on proxy statements  
8     **before, right?**

9             A.     Yes.

10            Q.     Proxy statements that are issued in  
11     **connection with merger transactions, right?**

12            A.     Yes.

13            Q.     You agree they are typically filed  
14     **sometime after a deal is announced, right?**

15            A.     Yes.

16            Q.     About how long after, in your  
17     **experience?**

18            A.     They are detailed documents. It  
19     takes a lot of drafting. I would say two  
20     months plus.

21            Q.     I think we may have touched on this  
22     **this morning. You agree that proxy**  
23     **statements typically contain information on**  
24     **the process that leads up to the execution of**  
25     **a merger agreement, right?**

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1 A. Yes.

2 Q. And the fact that merger proxies  
3 contain that information is commonly known to  
4 institutional investors, right?

5 A. That's correct.

6 Q. Commonly known to research analysts  
7 as well, right?

8 A. Correct.

9 Q. If one wants to learn about the  
10 process that a board followed leading up to a  
11 transaction, one would look first at the  
12 proxy statement, right?

13 MR. ZWICK: Objection.

14 A. That would be correct. One does  
15 not expect to find surprises in the proxy  
16 statement of the nature here.

17 BY MR. LYNCH:

18 Q. You don't believe there is anything  
19 misleading about the GFI merger proxy, do  
20 you?

21 A. Not that I see. It's quite  
22 detailed.

23 Q. Let me just ask you: If there was  
24 any intention on the part of -- well -- if  
25 one were to assume that the statement that

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1     **experience, that to then tell that potential**  
2     **acquirer that, Oh, hang on a minute, we are**  
3     **going to go conduct a market check, that**  
4     **might have the effect of alienating that**  
5     **potential acquirer, right?**

6           A.     Yes, but that applies more to the  
7     first scenario I mentioned, the Coca-Cola  
8     scenario, as distinct from the others because  
9     you are talking to these people at the same  
10    general period of time, and one or two are  
11    emerging as the front-runners. So when  
12    you have picked the front-runner and the  
13    best proposal, obviously, then you don't  
14    go out and do a second, you know, market  
15    check.

16           Q.     My question is different, and I  
17    think I have an answer to it, but let me just  
18    confirm. If you are negotiating with a  
19    single party on the other side, a single  
20    potential acquirer, and those negotiations  
21    have advanced to a certain degree, you would  
22    agree that to announce to that single party,  
23    your single potential acquirer, that you  
24    would like to conduct a market check would  
25    create the risk of alienating that single

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1       **potential acquirer, right?**

2               MR. ZWICK: Objection.

3               A.       Yes, that could be the case, but it  
4       also gets right to this process, because  
5       Gooch had been working practically -- for a  
6       number of months without informing the board  
7       on a CME deal. So by the time the special  
8       committee got involved, CME, in effect, had  
9       already put a proposal on the table, which  
10      shouldn't have been the case if the board and  
11      the special committee had been formed earlier  
12      because they would have been talking to other  
13      people at the same time with CME, so they  
14      wouldn't have been boxed into that situation.  
15      But, nevertheless, Greenhill still was  
16      recommending that they perform a market  
17      check, and that was their advice, and  
18      Greenhill is an excellent investment banking  
19      firm.

20      BY MR. LYNCH:

21              **Q.       You would agree that in a deal**  
22      **process, market checks can pose a risk of**  
23      **diminishing the value that the company might**  
24      **receive in a merger transaction --**

25              MR. ZWICK: Objection.



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1       **minutes were not sincerely held by him?**

2           A.       He may have believed them, but I  
3       would certainly take the advice of Greenhill  
4       over that of Mr. Gooch almost any day in the  
5       area of M&A strategy and process and  
6       procedure.

7           **Q.       Do you think Greenhill knew more**  
8       **about GFI and the risks that GFI faced than**  
9       **Mr. Gooch?**

10           MR. ZWICK: Objection.

11           A.       Greenhill is very sophisticated in  
12       the area of M&A. They are a top investment  
13       banking firm.

14       BY MR. LYNCH:

15           **Q.       You would agree, though, that**  
16       **managers and directors and executives of a**  
17       **company typically know more about the company**  
18       **than investment bankers advising that**  
19       **company, right?**

20           MR. ZWICK: Objection.

21           A.       More about the company, not about  
22       the M&A process. And here we have a  
23       management with a known agenda of wanting  
24       to buy the IDB at the lowest price  
25       possible.

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1     **likely?**

2           A.     Just plain statistics unless it's  
3     clearly perceived by people to be an  
4     undervalued transaction.

5           **Q.     But announcing a deal gives other**  
6     **potential acquirers the opportunity to**  
7     **perceive the value that others place on the**  
8     **target company?**

9           A.     Yes and no.   Some may have  
10    particular knowledge of a company, but they  
11    still can't get confidential information from  
12    the company unless they, under the fiduciary  
13    outs, unless they put forward what seems to  
14    be a bona fide deal that could be deemed by a  
15    board or a special committee to be a superior  
16    proposal, and then they are entitled to get  
17    confidential information or what have you but  
18    not before that.

19                So there is a lot of information  
20    they don't have to make an assessment.

21           **Q.     But announcing a deal with a**  
22     **fiduciary out in it allows other interested**  
23     **parties to make better offers for the target**  
24     **company if they were interested in doing so,**  
25     **right?**

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1 MR. ZWICK: Objection.

2 A. Possibly with the caveats that I  
3 just mentioned that they may not have the  
4 inside information which would be critical  
5 for them to come to that conclusion.

6 BY MR. LYNCH:

7 Q. Let's take a look at your report,  
8 please, Mr. Purcell, Exhibit 191, and I would  
9 ask you to turn to page 7.

10 Do you have that in front of you?

11 A. Yes.

12 Q. I will focus your attention on  
13 subparagraph 4 and the last sentence of that  
14 subparagraph.

15 A. The last sentence.

16 Q. I will read it, but let me know if  
17 you are not there yet.

18 A. The one that begins "in addition"?

19 Q. Yes.

20 "In addition, the winning bid by  
21 BGC was, in part, possible because BGC was  
22 able to take advantage of the significant  
23 cost savings synergy of approximately 90  
24 million per year which the financial adviser  
25 to Gooch, Jefferies & Company ('Jefferies'),

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1 BY MR. LYNCH:

2 Q. Mr. Purcell, please turn to  
3 paragraph 51 of your opening report. I asked  
4 you a few questions about this earlier. But  
5 it references a letter that GFI received on  
6 July 29th from BGC, right?

7 A. Yes.

8 Q. Are you offering any opinion on  
9 whether that letter should have been  
10 disclosed to GFI shareholders in connection  
11 with the CME deal?

12 A. No. I don't think -- it did not  
13 need to be disclosed. I just listed it as a  
14 fact.

15 Q. And if you go to page 22 --

16 A. I am just looking at this too,  
17 paragraph 51, just started to read it again.  
18 And as I am looking at this, I think I  
19 misstated because you asked me the question  
20 and now I am -- when you referred me back to  
21 this question -- this paragraph, I think -- I  
22 can't remember exactly what I said, but I  
23 think I misstated to you that my recollection  
24 was that he owned the entire 13 1/2 percent  
25 at July 29th, and I think it was only a